

Service Date: March 8, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF the Petition of )	UTILITY DIVISION
MCI TELECOMMUNICATIONS CORPORATION )	DOCKET NO. 92.11.65
to Repeal ARM 38.5.3345 )	ORDER NO. 5683a

ORDER ON MOTION FOR RECONSIDERATION

I. Background.

1. On November 6, 1992 MCI filed a petition to repeal ARM 38.5.3345 and a motion requesting that the Commission refrain from enforcement proceedings pending resolution of the petition. The petition was denied on November 13, 1992.

2. On November 23, 1992 MCI filed a motion to reconsider. MCI alleged that there was no record evidence to support either the rule or the Commission's decision not to repeal. MCI also questioned the accuracy of certain slamming data provided to the Commission by US West Communications.

3. On reconsideration the Commission acknowledged that legitimate questions existed concerning the data. While it was determined that uncertainty about the data did not warrant repeal of ARM 38.5.3345, the Commission decided to review more complete data before allowing the rule to go into effect. As a result, enforcement of the rule was stayed until such time as the Commission had considered such new data.

4. On January 4, 1993 MCI filed the instant motion for limited reconsideration of the Commission's decision to stay enforcement of ARM 38.5.3345. MCI argues that the stay of enforcement violates the rulemaking provisions of the Montana Administrative Procedure Act (MAPA) and is inconsistent with the statutory mandate that the Commission enforce public utility law. It is MCI's contention that the only legal way to change a rule's effective date or any other provision is through rulemaking.

## II. Discussion.

5. MAPA sets forth the provisions governing the adoption, amendment and repeal of administrative rules. Pertinent to MCI's instant motion is Section 2-4-302, MCA, which provides:

Notice, hearing, and submission of views.

(1) Prior to the adoption, amendment or repeal of any rule, the agency shall give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon.

6. ARM 38.5.3345 provides for an effective date of January 1, 1993. The Commission's decision to stay enforcement of the rule for a period of time after January 1, 1993 resulted in a de facto change in this effective date. Because this change affected the substance of the rule the Commission should have initiated rulemaking in accordance with Section 2-4-302, MCA.

Therefore, since it did not comply with this section the stay of enforcement constituted an invalid exercise of rulemaking.

7. In light of this finding the Commission will initiate rulemaking to formally amend ARM 38.5.3345 to show an effective date of September 1, 1993.

Done and Dated this 1st day of March, 1993 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

Bob Anderson  
BOB ANDERSON, Chairman

Bob Rowe  
BOB ROWE, Vice Chairman

Dave Fisher  
DAVE FISHER, Commissioner

Nancy McCaffree  
NANCY MCCAFFREE, Commissioner

Danny Oberg  
DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson  
Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.